

March 12, 2007

Good Morning, Chairman Mendenhall and Members of this Committee:

For the record, my name is Doug Nulle. I am a retired attorney and a resident of Clancy. I rise in support of SB 339 and I commend Senator Murphy for sponsoring this bill.

Let me preface my remarks by acknowledging the reality of urban growth and the need for cities and towns to plan for that growth and accommodate it to increase their tax bases and strengthen their local economies. I understand that concept well, having lived in cities most of my life. However, there does need to be some limits placed on municipal planning which involves annexation that could have a negative impact on an adjoining county's existing growth policy, subdivision regulations or zoning regulations.

There are those who believe that this issue is an anomaly that only affects the City of Helena and Jefferson County. But I would submit to you that whether that is, in fact, the case at the present time, with projected future population growth in our state and the resulting expansion of other cities and towns, it will only be a matter of time before we will be confronting this issue again in other areas of the state unless we establish some statutory guidelines and limitations now to address it. Nonetheless, for the sake of brevity, I will confine the balance of my remarks to the current issue affecting the City of Helena and Jefferson County, where I currently reside.

The fact of the matter is that this particular issue most likely will either be resolved here or in the courts. My preference is that it be resolved here and I'm quite confident that many others share that viewpoint, as well.

As a resident and property owner in Northern Jefferson County, my concern over the prospect of compulsory annexation being imposed on real property within our county by the City of Helena is twofold.

First of all, and in line with what has been pointed out in previous testimony by the other proponents, I'm concerned about the effect that annexation could have on the existing growth policy, subdivision regulations and zoning regulations for Northern Jefferson County and the impact of that effect upon the operations of Ash Grove Concrete, which is one of Jefferson County's largest property taxpayers. Any cessation of Ash Grove's operations would create a severe negative impact to our county's property tax base, which would ultimately be borne by the remaining property taxpayers in Jefferson County.

Secondly, I believe the City of Helena has other planning options available to accommodate its projected future growth and to strengthen its local economy.

First of all, the city could simply contract to provide water and sewer services to the affected properties in Jefferson County, with the property owners compensating the city for their pro-rata share of the maintenance, delivery and other costs involved in providing these services.

It is my understanding that the City of Helena currently has an ordinance in place to prohibit the provision of water and sewer services to properties located outside of their city limits unless those properties are annexed into the city. But it seems to me that to address the service requests posed by any Jefferson County landowners, the Helena City Commission could simply pass a separate ordinance, providing an exception to their current one. There is really no compelling reason for the city to resort to the drastic step of annexation of property which they could otherwise provide services to under contract, particularly if that property is located in an adjoining county and subject to that county's existing growth plan, subdivision regulations and zoning regulations.

The city also has the option of planning for growth in other contiguous areas of Lewis and Clark County. Geographically speaking, they have the option of annexing northward, westward and eastward. They do not have to annex southward into Jefferson County to accommodate their projected future growth needs.

In sum, I believe the limits imposed on municipal cross-county annexations by this bill are reasonable and are designed to protect the local economy and existing planning, subdivision and zoning regulations of an adjoining county. It's a good bill and I respectfully request your support on it. Thank you.

VOLUME NO. 51

OPINION NO. 18

ANNEXATION - function of municipal government;
CITIES AND TOWNS - annexation;
LOCAL GOVERNMENT - annexation;
MUNICIPAL GOVERNMENT - annexation;
STATUTORY CONSTRUCTION - avoid absurd results;
MONTANA CODE ANNOTATED - Title 7, chapter 2, parts 41, 42 to 47, 43; sections 1-2-101, 7-1-2103, 7-2-4101, (1), -4204(1), -4703(2), (3), 7-6-2501 to -2541, 13-3-101 to -105;
MONTANA CONSTITUTION - Article XI, section 4.

HELD: Cross-county annexation is permitted by Montana law and is not dependent upon county approval.

September 21, 2006

Mr. Mathew J. Johnson
Jefferson County Attorney
P.O. Box H
Boulder, MT 59632

Dear Mr. Johnson:

You have requested my opinion on an issue that has arisen in your county concerning cross-county annexation. I have rephrased your questions as follows:

Is a municipality located in one county required to obtain approval from a neighboring county if it seeks to annex territory within the borders of the neighboring county?

Montana Code Ann. § 7-2-4101 sets forth the procedure for organization of a new municipality. Subsection 1 provides:

Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less

than two-thirds of the registered electors but not more than 300 such electors, who are residents of the state and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated.

Section 7-2-4204(1) governs the procedure for approval of the petition. It provides that after the petition has been filed and a census completed, if it has been determined that the requisite number of inhabitants exist for the formation of a municipal corporation, "the county commissioners shall call an election of all the registered electors residing in the territory described in the petition."

The role established by the legislature for county government in the creation of a new municipality is a procedural rather than substantive one. The county is responsible for ensuring that the establishment of a municipality proceeds along the appropriate steps. The governing statutes do not give county government the authority to approve or deny the petition for incorporation so long as the statutory process has been observed.

Where part 41 governs organization of a municipality, parts 42 through 47 govern the annexation process for existing municipalities. The statutes provide for six independent annexation methods. Review of these statutes indicates that, as with the creation of a new municipality, the annexation provisions do not extend authority to county governments to approve or deny a proposed annexation. The permission of the county in which a municipality was originally incorporated is not required before a municipality may annex additional territory within that county. For instance, the city of Helena would not be required to request the approval of Lewis and Clark County if it proposed to annex contiguous land in Lewis and Clark County pursuant to part 43. Absent specific statutory language to the contrary, it logically follows that the neighboring county's approval is not required if the annexation crosses over county boundaries to annex territory in a neighboring county.

Cross-county annexation of land into a city does not alter existing county boundaries or impair powers statutorily granted to county government. See, e.g. Mont. Code Ann. § 7-1-2103 (county powers); Mont. Code Ann. § 7-6-2501-2541 (county taxation); and Mont. Code Ann. § 13-3-101-105 (designation of precincts and polling places).

As Montana's urban areas grow, it is likely cross-county annexation may become more common. The annexation provisions, particularly those found in part 47, express the legislature's desire to ensure sound urban development and an acknowledgement that

municipalities are created "for the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development, and future annexations must consider these principles." Mont. Code Ann. § 7-2-4703(2). The legislature's ultimate objective was to create standards for annexation in order to ensure the high quality of services needed for public health, safety and welfare. Mont. Code Ann. § 7-2-4703(3).

My role in construing a statute "is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. §1-2-101. Had the legislature intended to require county approval for municipal annexation, it would have reflected its intent in statute. However, there is nothing in the plain language of the relevant statutes that indicates the legislature intended to require county approval for municipal annexation. ✕

In addition to the governing statutes, I reviewed a memo written by then Department of Business Regulation considering the question of cross-county annexation. That memo concluded that cross-county annexation was not allowed in Montana and cited a general principle that cross-county annexation should not be allowed unless the authority for such annexation is explicitly expressed or clearly implied in statute. The memo concluded that Montana was more similar to jurisdictions that had not allowed cross-county annexation, than to jurisdictions that found it to be permissive.

After reviewing the cases on which the memo relied and I have concluded that they are inapplicable given the statutory scheme governing annexation in Montana. For instance, the express language of the governing annexation statutes in many of the cases that were cited provided that incorporated cities or towns could only annex lands which were "within the same county." See County of San Mateo v. City Council of City of Palo Alto, 335 P.2d 1013 (Cal. App. 2d 1959); Norlund v. Thorpe, 110 Cal. Rptr. 246, 34 Cal. App. 3d 672 (1973); and McGeary v. Dade County, 342 So. 2d 549 (Fla. Dist. Ct. App. 3d Dist. 1977). As was discussed in detail above, Montana law does not expressly or impliedly limit annexation by county boundaries.

Under the Montana constitution, "the powers of incorporated cities and towns and counties shall be liberally construed." Mont. Const. art. XI, § 4. The legislature has provided means by which municipalities may exercise the power of annexation, and I may not restrict the exercise of those powers by adding requirements the legislature has not provided. See Mont. Code Ann. § 1-2-101.

Mr. Mathew Johnson
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THEREFORE, IT IS MY OPINION:

Cross-county annexation is permitted by Montana law and is not dependent upon county approval.

Very truly yours,

MIKE McGRATH
Attorney General

mm/anb/jym

Resolutions of the City of Helena, Montana**RESOLUTION NO. 11716****A RESOLUTION ANNEXING VARIOUS PARCELS OF PROPERTY
IN LEWIS AND CLARK COUNTY, MONTANA,
INTO THE CITY OF HELENA, MONTANA**

WHEREAS, thirty-six (36) parcels of property on Custer Avenue, Airport Road, Billings Avenue, Carter Drive, Gibbon Street, and Blaine Street have been identified as wholly surrounded property and are ripe for annexation into the City of Helena; and

WHEREAS, the City of Helena desires to annex said property under the provisions of Montana law; and,

WHEREAS, the question of annexation need not be submitted to the qualified voters of the areas to be annexed; and,

WHEREAS, the annexation of the property more particularly described below appears to be in the best interests of the inhabitants of the City of Helena, Montana; and

WHEREAS, a public hearing was held on this matter on the 17th day of December, 2001, at 6:00 p.m. in the City Commission Chambers at 316 North Park Avenue, Helena, Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, AS FOLLOWS:

Section 1. The Helena City Commission hereby annexes the following described properties and will provide City services in accordance with an annexation service plan to be adopted by the City:

1. That tract of land described as Portion A on COS #495361/B;
2. A .51-acre tract of land described in Book 280, page 599½;



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23. Block 21 in the Boyce Addition and one-half ($\frac{1}{2}$) of the vacated portions of Market Street and Butte Avenue adjacent thereto;
24. Lots 9 and 10A in Block 3 of the Hewins Addition as shown on COS #432510, and Tract B-1 in Block 3 as shown on COS #523087/B;
25. Block 4 in the Boyce Addition;
26. Block 5A in the Boyce Addition as shown on COS #557092;
27. Block 6 of the Boyce Addition;
28. Parcel A-3A in Block 7A of the Boyce Addition as shown on COS #559087;
29. Parcel A-1A in Block 7A of the Boyce Addition as shown on COS #559087;
30. The Bailly parcel described on COS #371449;
31. Tract B of the Bailly Minor Subdivision shown on COS #555300;
32. Tract A of the Bailly Minor Subdivision shown on COS #555300;
33. The .79-acre tract in Block 29 of the Boyce Addition as shown on COS #363869;
- 34(A). Block 26 in the Boyce Addition and the vacated portion of Missoula Avenue adjacent thereto as shown on the document recorded in Book M 11, page 8175; and
- 34(B). Block 27 in the Boyce Addition and the vacated portions of Missoula Avenue and 20th Street adjacent thereto and described on that document recorded in Book M 11, page 8175;

Section 2. The boundaries of the City of Helena are extended to include the above-described property.

Section 3. Annexation of the above-described properties will be effective on January 1, 2002, except for that property shown as number 3. above (a tract of land described in Book M9, page 353).



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The effective annexation date for that property will be July 8, 2002.

Section 4. The Clerk of the Commission shall certify, under seal of the City of Helena, this Resolution which shall be filed with the Clerk and Recorder of Lewis and Clark County, and thereafter said annexed property shall be a part of the City of Helena and the City of Helena shall have the power to pass all necessary ordinances pertaining thereto.

PASSED AND EFFECTIVE BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS 17th DAY OF DECEMBER, 2001.



MAYOR

CLERK OF THE COMMISSION

